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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 05-44481-rdd

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In the Matter of:

DPH HOLDINGS CORP., ET AL.,

Debtors.

- - - - -x

MODIFIED BENCH RULING

U.S. Bankruptcy Court
300 Quarropas Street
White Plains, New York

March 18, 2010
10:12 AM

B E F O R E:

HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

Transcribed by: Dena Page

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1 P R O C E E D I N G S

2 THE COURT: I have before me a claim objection by DPH
3 Holdings Corporation, which is the successor through the
4 confirmed and effective Chapter 11 plan for Delphi Corporation
5 and its affiliated debtors and debtors in possession with
6 regard to claims asserted against those entities. It has
7 objected to proofs of claim filed by the IAM, IBEW and IUOE,
8 all unions or union locals representing former workers for the
9 debtors who were covered by the Delphi HRP, or Delphi pension
10 plan. I'll sometimes refer to these unions as the splinter
11 unions. That's just a colloquial term to distinguish them from
12 the UAW, the United Steelworkers, and the IUE, who in the
13 aggregate represent far more of the debtors' former employees.

14 The objection originally addressed several claims by
15 the splinter unions. Based on the initial hearing on the claim
16 objection and the unions' response, I asked the parties for
17 further briefing. The first issue that I asked to be briefed
18 has now been completely clarified. It is now clear, and the
19 unions so acknowledge, that the only claims that they are
20 proceeding on at this point (having acknowledged that they have
21 no other disputed claims) are claims that they have asserted
22 for the reduction in their members' recovery of pension
23 benefits under the HRP -- or the so-called nonguarantied claim
24 portion of their pension benefits.

25 By the "nonguarantied claim portion," I mean the

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1 following. The Delphi HRP was terminated and taken over by the
2 PBGC. Under ERISA, the PBGC is responsible for paying amounts
3 to the pension beneficiaries. The three unions seek to have
4 allowed their claims against Delphi for the amounts owed to
5 their members as beneficiaries of the terminated pension plan
6 that exceed the amounts that will be paid by the PBGC.

7 The unions assert two separate grounds, or alternative
8 grounds, for these claims.

9 First, they contend that the debtors' termination of
10 the pension plan and the subsequent creation of the benefit
11 reduction claims, or the nonguaranteed claims, violates their
12 respective collective bargaining agreements and, therefore,
13 gives rise to a breach claim.

14 Secondly, they assert, or alternatively they assert,
15 that the agreement by Delphi with the PBGC and GM in respect of
16 the treatment of the Delphi HRP, which fixed the PBGC's claim
17 under ERISA against the debtors in respect of the pension plan
18 for termination liability and facilitated the agreement by GM
19 to backstop any unpaid, nonguarantied plan benefits for certain
20 beneficiaries of the plan -- namely the beneficiaries who were
21 members of the UAW (and the recognition of the possibility of
22 GM doing the same for other beneficiaries -- namely the
23 beneficiaries represented by the United Steelworkers and the
24 IUE), constituted a breach of fiduciary duty by Delphi in its
25 capacity as a pension plan fiduciary.

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1 The debtors have raised numerous grounds for objecting
2 to these claims. The first ground, and I will focus now on the
3 unions' contract claim, is that under ERISA as amended post-
4 1986, the PBGC has been given sole control over the liability
5 of an employer/sponsor, such as the debtors, in respect of a
6 pension plan, such as the Delphi HRP, and that such liability
7 is owed uniquely to the PBGC. And, in particular, it is not
8 owed under Section 301 of the LMRA or assertable by a union,
9 notwithstanding the existence of a collective bargaining
10 agreement that requires the payment of such benefits.

11 The case law on this issue, I believe, is clear and
12 convincing that the debtors' position is correct. The leading
13 case is United Steelworkers of America v. United Engineering,
14 Inc., 52 F.3d 1386 (6th Cir. 1995), which discusses the state
15 of the law prior to the amendments to ERISA, in which the
16 courts, including the Sixth Circuit as well as the Second
17 Circuit, had filled in what they perceived to be a gap in ERISA
18 that enabled other parties, including unions, to assert a
19 pension underfunding claim against the employer/plan sponsor.
20 As discussed in the United Engineering case, it appears clear
21 that Congress, aware of such case law, amended ERISA in 1986 so
22 that employers would be liable only to the PBGC for the total
23 amount of unfunded pension benefit liabilities of a terminated
24 plan.

25 So, based on the United Steelworkers case and cases it

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1 cites, including In re Adams Hard Facing Company, 129 B.R. 662
2 (W.D. Okla. 1991), and International Association of Machinists
3 and Aerospace Workers v. Rome Cable Corporation, 810 F. Supp.
4 402 (N.D.N.Y 1993), as well as the subsequent case of In re
5 Lineal Group, 226 B.R. 608 (Bankr. M.D. Tenn. 1998), I believe
6 that the unions' breach of contract claim is preempted by
7 ERISA, or, stated differently, under ERISA only the PBGC has a
8 claim for termination liability.

9 On the preemption argument, or in response to the
10 preemption argument, the unions point to one case and to a
11 theory; however, having considered both, I am not persuaded. As
12 far as the case is concerned, the unions point to an unreported
13 decision of the Sixth Circuit, Local No. 1654 International
14 Brotherhood of Electrical Workers v. LG Phillips Display
15 Components Company, 137 Fed. Appendix 776 (6th Cir. June 7,
16 2005), in which the Sixth Circuit recognized that while state
17 law claims for the recovery of employee benefits are always
18 preempted by ERISA, claims involving rights created by
19 collective bargaining agreement are governed by the LMRA and,
20 at least in respect of the facts there at hand, are not
21 superseded by ERISA. The facts at hand in that case, however,
22 involved not a termination of a pension plan and the resulting
23 claim assertable after its takeover by the PBGC for the plan's
24 underfunding, or deficiency, but, rather, a fraud claim in
25 connection with the sponsor's negotiations involving the

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1 termination of the plan leading to the agreement of the union
2 to receive their retirement benefits in a lump sum. There was
3 no indication in that case that the retirement benefits would
4 not be paid in full, only a dispute with regard to the factors
5 used in computing the lump sum cash payment. The Sixth Circuit
6 in that unpublished decision recognized the United Steelworkers
7 case and stated, however, that the United Steelworkers case was
8 decided on the narrow ground that ERISA preempted claims for
9 nonguaranteed pension benefits against plan sponsors because
10 ERISA had been amended to provide that plan sponsors were not
11 otherwise liable for nonguaranteed benefits.

12 The unions would interpret that sentence to state,
13 effectively, that as long as there is a separate basis for a
14 claim for nonguaranteed benefits (in the present case, under
15 the splinter unions' collective bargaining agreements), the
16 claim would not be preempted by ERISA. I do not view that to
17 be correct. I believe that the United Steelworkers case, in
18 fact, involved just such a situation as the present dispute
19 before me and, nevertheless, the Sixth Circuit, I think
20 correctly, held that the claim under Section 301 of the LMRA
21 was preempted -- as is, I believe, also required by the logic
22 of that decision as applied to the present claims of the
23 splinter unions: literally, under ERISA, the debtors are not
24 liable for such claims, except to the PBGC. And so, therefore,
25 when one looks at the terms of the collective bargaining

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1 agreements here, which are set forth in the three MOUs entered
2 into by the respective splinter unions, and Delphi Corporation,
3 paragraph 2(b) of the MOUs states that "Delphi will cause the
4 frozen Delphi HRP to pay benefits in accordance with the terms
5 of the Delphi HRP and applicable law."

6 "Applicable law" here, as interpreted by the Sixth
7 Circuit based on an apt reading of ERISA, would fix the
8 sponsor's pension liability as it was fixed with the PBGC --
9 and that would be the claim, a claim, further, assertable only
10 by PBGC.

11 There is another, separate basis, as well, for
12 disallowing the splinter unions' breach of contract claims.
13 The provision of the MOUs that I just quoted, paragraph 2(b),
14 goes onto say "These benefits will not be reduced from the
15 levels in effect as of the date immediately preceding the
16 effective date of the MOU unless they are similarly reduced for
17 other retired Delphi HRP participants. The IUOE [and this is
18 also as agreed by the other two unions] agrees that Delphi
19 reserves its right to seek termination of the Delphi HRP
20 consistent with applicable law."

21 Delphi contends that the reservation of rights in the
22 last sentence of paragraph 2(b) recognizes Delphi's right to
23 terminate the HRP and to have the unions' claims be limited to
24 the claim determined by the PBGC, with no additional claim to
25 be assertable by the unions.

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1 The unions contend, to the contrary, that the last
2 sentence of paragraph 2(b) recognizes only a right to terminate
3 the HRP, not a right to be relieved of a claim for breach of
4 the MOUs. As the debtors have pointed out, I have already
5 dealt with this issue to some extent in the context of the
6 splinter unions' objections to the PBGC settlement and the
7 confirmation of the debtors' modified chapter 11 plan, which
8 contemplated the implementation of the PBGC settlement. At
9 that time, in approving the PBGC settlement I found that the
10 debtors were not precluded from entering into the settlement by
11 the splinter unions' collective bargaining agreements. But in
12 that context I did not address, I believe, sufficiently for res
13 judicata or collateral estoppel purposes whether a resulting
14 breach claim had been precluded by the MOUs' own language. At
15 that time, in approving the settlement, I was requested only to
16 find that the settlement was fair and equitable and in the best
17 interests of the debtors and their estates (although I believed
18 that the reduction of the PBGC's termination or deficiency
19 claim under the settlement was consistent with Delphi's
20 obligations under the MOUs, which first recognized the debtors'
21 right to terminate the pension plan and, therefore, the
22 implicit role to be played by the PBGC in fixing the
23 termination claim). Therefore, I do not accept the debtors'
24 reading of the last sentence of paragraph 2(b) or the debtors'
25 argument that the unions are precluded by my earlier rulings

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1 approving the PBGC settlement and confirming the chapter 11
2 plan from asserting their claims.

3 As quoted earlier, paragraph 2(b) of the MOUs has a
4 second, critical provision, however, which states that the
5 benefits provided under the Delphi HRP to the unions' members
6 can be reduced if they are similarly reduced for the other
7 Delphi HRP participants. I believe the record is clear that
8 with the termination of the pension plan the benefits under the
9 Delphi HRP were reduced equally, across the board, with regard
10 to all participants and, therefore, the savings provision in
11 the second sentence of paragraph 2(b) applies as an alternative
12 basis to defeat the splinter unions' breach of contract claim.

13 Again, that sentence reads, "These benefits" ["these"
14 referring to the "benefits under the terms of the Delphi
15 HRP,"]"will not be reduced from the levels in effect as of the
16 date immediately preceding the effective date unless they [the
17 "they" clearly refers to "these benefits"] are similarly
18 reduced for other retired Delphi HRP participants."

19 The record is clear that upon termination of the
20 Delphi HRP, the benefits paid by the Delphi HRP were paid pro
21 rata, across the board to the beneficiaries of the HRP by means
22 of the PBGC's claim.

23 The splinter unions argue that, as a result of the
24 PBGC settlement, GM agreed to backstop those amounts that would
25 not be paid out across the board by the Delphi HRP to the PBGC

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1 and from the PBGC to the beneficiaries, but those are GM
2 benefits and not Delphi HRP benefits. So it appears clear to
3 me that under the terms of the applicable MOUs there has not
4 been a breach of the splinter unions' collective bargaining
5 agreements, even if the splinter unions had standing to assert
6 their claims notwithstanding ERISA's preemption of the right to
7 assert the deficiency claim arising upon plan termination.

8 The second basis for the splinter unions' claims, as I
9 said, is that, not as the employer or plan sponsor but as a
10 plan fiduciary, Delphi is liable for a breach of fiduciary duty
11 to each of the three unions' member beneficiaries. Before
12 discussing the nature of the fiduciary duty that Delphi would
13 have to the beneficiaries of the HRP and the alleged breach of
14 that duty, however, I should first deal with the issue of the
15 unions' standing to pursue such a claim.

16 The law in the Second Circuit and this district is
17 clear that the right to assert claims for breach of fiduciary
18 duty under ERISA is limited to the specific types of persons or
19 entities listed in Section 502 of ERISA. It is also clear that
20 the unions are not pursuing the breach of fiduciary duty claims
21 as a beneficiary of the Delphi HRP or in any other capacity
22 recognized specifically by section 502 of ERISA. Consequently,
23 the debtor has argued that the unions do not have standing to
24 bring this breach of fiduciary claim under Section 101(5) of
25 the Bankruptcy Code (defining a "claim").

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1 I agree with the debtor's argument that the unions do
2 not have standing to assert their members' alleged breach of
3 fiduciary duty claims under ERISA. It is worth emphasizing
4 that this argument regarding the unions' standing is not
5 premised upon pre-emption, because the unions are correct that
6 a fiduciary duty claim against an ERISA fiduciary is not the
7 same thing as the underfunding or deficiency claim that only
8 the PBGC has standing to pursue against a plan sponsor. It is,
9 rather, based on a separate provision of ERISA, section 502.
10 However, as is clear from the case law, a claim for breach of
11 such a fiduciary duty is limited by section 502 to parties that
12 do not include the unions. See Local 100 Transport Workers
13 Union v. Rosen, 2007 WL 2042511 (S.D.N.Y. July 13, 2007);
14 Toussaint v. J.J. Wiser & Company, 2005 WL 356834 (S.D.N.Y.
15 February 13, 2005); District 65 UAW v Harper & Row Publishers
16 Inc., 576 F Supp 1468 (S.D.N.Y. 1983). See also McCabe v.
17 Trombley, 867 F. Supp. 120 (N.D.N.Y. 1994).

18 In response, the unions cite The American Medical
19 Association v. United Healthcare Corporation, 2002 U.S. Dist.
20 LEXIS 20309 (S.D.N.Y. October 23, 2002), as well as The
21 American Medical Association v. United Healthcare Corporation,
22 2003 U.S. Dist. LEXIS 1398 (January 30, 2003), in which Judge
23 McKenna gave standing to, in the first case, the American
24 Medical Association plaintiff and, in the latter case, to,
25 among others, unions, in fiduciary duty breach litigation under

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1 ERISA. However, he did so after having carefully analyzed the
2 factors for associational standing set forth in International
3 Union United Auto Workers v. Brock 477 U.S. 274, 281 (1988).
4 In so doing, he made it clear in both opinions that he granted
5 standing only insofar as the relief sought by the Association
6 or the unions related to claims for injunctive or declaratory
7 relief, as opposed to a damages claim. (I also note that the
8 second order issued by Judge McKenna, which applied to the
9 unions, was, in addition to being limited to that basis,
10 entered expressly without opposition by any party.) Here, as I
11 noted, however, the splinter unions are asserting a claim
12 against Delphi's estate, payable under section 101(5) of the
13 Bankruptcy Code, even if based in equity, in money, which
14 clearly takes the unions out of the ambit of the The American
15 Medical Association decisions.

16 The unions also rely on Southern Illinois Carpenters'
17 Welfare Fund v. Carpenters' Welfare Fund of Illinois, 326 F.3d
18 919, (7th Cir. 2003). However, in addition to the fact that
19 the Carpenters' Welfare Fund case, I believe, is not on point
20 with the present facts, it is also contrary to the case law
21 from the Second Circuit that I've previously cited (to the
22 extent it is on point, which, again, I don't believe to be the
23 case).

24 So, before turning to the merits of the breach of
25 fiduciary duty claim, I conclude that the unions' claims should

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1 be disallowed based on the unions' lack of standing to pursue a
2 right to payment for breach of a fiduciary duty under the
3 foregoing case law and section 502 of ERISA.

4 This is not an evidentiary hearing; it is a
5 sufficiency hearing and, therefore, is generally governed by a
6 standard akin to -- in fact, on all fours with -- for purposes
7 of the claims resolution process in these cases, the standard
8 under Federal Rule of Civil Procedure 12(b)(6), Twombly and
9 Iqbal. Therefore, I am focusing only on the assertions in the
10 unions' claims and whether they would set forth, if proven,
11 legally feasible claims. I'm not weighing the evidence that
12 might be offered in their support (although, if the claims'
13 assertions simply are not plausible, given the context, in
14 which case I would require the unions to set forth more in
15 their claims or disallow them).

16 That last wrinkle really doesn't come into play here,
17 however, because of the clarification of the nature of the
18 union's breach of fiduciary duty claim as set forth in the
19 additional briefing and at oral argument. It is now clear
20 that, as far as the breach of fiduciary duty theory goes, the
21 unions contend that Delphi, as a plan fiduciary under the HRP,
22 breached its fiduciary duty essentially in two ways (and again
23 this is with the debtor wearing its hat as plan administrator
24 and not as employer/sponsor or in any other capacity).

25 First, the unions contend that although Delphi as plan

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1 sponsor agreed, in the PBGC settlement, that the PBGC was
2 entitled to an allowed claim of seven billion dollars in
3 respect of the employer's termination of the pension plan,
4 settlement provided that the PBGC would have an allowed claim
5 against Delphi as plan sponsor of only three billion dollars.
6 The unions contend, therefore, that as plan administrator the
7 debtor left money on the table for itself as plan sponsor
8 rather than having it be allocated to pay a larger claim, and,
9 therefore, in essence, that it was self-dealing.

10 Secondly, the unions contend that, in the same PBGC
11 settlement agreement, Delphi agreed, along with the PBGC and
12 GM, that to the extent that the pension benefit claims of the
13 Delphi HRPs' beneficiaries would not be paid in full post-
14 termination, GM would pay the difference as far as the United
15 Auto Worker beneficiaries were concerned. The PBGC settlement
16 agreement also contemplated the possibility that the same GM
17 "top up" treatment would apply to other union member
18 beneficiaries of the Delphi HRP, such as the United Steel
19 Workers and the IUE, which treatment eventually was agreed to
20 by GM.

21 (The debtor also facilitated the so-called 414(i)
22 transfers of Delphi HRP beneficiaries' liabilities and the
23 associated plan assets to other pension plans sponsored by GM.
24 I do not believe, however, that these latter agreements are
25 being attacked by the splinter unions as a breach of fiduciary

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1 duty, nor do I believe that there would be a basis for such
2 transfers to be attacked.)

3 The splinter unions' contention is, with regard to the
4 GM "top up" agreement, that Delphi was unfavorably or unfairly
5 permitting certain beneficiaries of its terminated pension plan
6 to receive additional value in the form of the GM backstop and
7 that this constituted a breach of fiduciary duty to the
8 splinter unions' member beneficiaries, who GM did not offer to
9 "top up."

10 The fiduciary duty of a plan administrator is clearly
11 different than and separate from the obligations of a plan
12 sponsor or the employer that established the plan. It's a
13 fiduciary duty that arises under ERISA, and the parties are
14 generally in agreement that under ERISA a fiduciary is one who
15 exercises authority or control respecting management or
16 disposition of the plan's assets, therefore having control over
17 the operation of the plan, as opposed to the plan's terms.

18 Delphi's decision to agree with the PBGC to the plan's
19 termination itself is clearly not a basis for a claim against
20 Delphi, as plan administrator, for breach of fiduciary duty
21 under ERISA. That was a plan sponsor function, not a plan
22 fiduciary function; it also was a step the PBGC took on its
23 own. When considering the fiduciary duty claim, the focus
24 would instead need to be upon whether, in administering the
25 plan, Delphi, as plan administrator, breached a fiduciary duty

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1 under ERISA. The two cases cited by the unions in support of
2 their breach of fiduciary duty claim fall into that context.
3 Solas v. Current Development Corporation, 557 F.3d 772 (7th
4 Cir. 2009), involves an administrator's clear self dealing
5 where the trustee "finagled" a plan's termination so that he
6 and his wife would receive more than their fair share as plan
7 participants. In District 65 UAW v. Harper & Row Publishers
8 Inc., 670 F. Supp 550 (S.D.N.Y. 1987), the court found
9 potential breach of fiduciary duty liability with regard to the
10 administrator's use and actual control of the pension plan's
11 assets.

12 I simply do not see, moreover, how the provisions of
13 the PBGC settlement that contemplated the backstop by GM of
14 unpaid, nonguaranteed liabilities of the beneficiaries who were
15 members of the UAW (and the potential for doing the same for
16 other union beneficiaries) could fall into the category of a
17 breach of fiduciary duty by Delphi as plan administrator. As I
18 noted in connection with the contract portion of my ruling, the
19 amount of payments under the settlement agreement coming from
20 Delphi are not affected by the GM backstop. The GM backstop
21 involves assets of a third party, GM, and GM's agreement, for
22 its own reasons, to supplement what would be available from the
23 PBGC and, therefore, would, to my mind, under no circumstances
24 result in any misuse of the plan's assets or unfair or
25 discriminatory treatment of the HRP's beneficiaries in respect

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1 of those assets by the plan administrator, Delphi.

2 The allowance of the PBGC's claim in a reduced amount
3 under the PBCG settlement agreement at least does involve,
4 indirectly, the treatment of an asset of the plan (unlike the
5 recognition of the GM backstop in the PBGC settlement), but I
6 believe it does so only superficially and not as a basis for
7 giving rise to a breach of fiduciary duty. By its terms the
8 PGGC settlement agreement was made in contemplation of the
9 PBGC's termination of the Delphi HRP, and the allowance of the
10 PBGC's claim under the settlement agreement was effectively
11 contingent upon such termination. Upon termination, the PBGC
12 would have sole control of that claim. It was the PBGC's claim
13 to assert, defend and maximize. In that context, the PBGC's
14 agreement on the claim's allowance was with Delphi as plan
15 sponsor, not as plan administrator.

16 I do not believe that Delphi had an obligation to
17 bargain against itself in that context for a higher PBGC claim.
18 Because the claim was controlled by the PBGC under the premises
19 of the settlement agreement, I do not believe, either, that
20 Delphi, as plan administrator, had an obligation to jump up and
21 intervene to insist that the PGBC's claim should be higher.
22 Instead, I believe that, given the context of the settlement
23 agreement, it was proper to look to PBGC, as the owner of the
24 claim, to protect the claim, and that Delphi's potential
25 conflict of interest was therefore mooted by the role that the

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1 PBGC played. Moreover, the PBGC settlement was subject to
2 notice and Court approval, which occurred. It was not a hidden
3 transaction, like the dealings in the cases cited by the
4 unions. Consequently, I do not believe that this aspect of the
5 union's claim sets forth a claim for breach of fiduciary duty,
6 either.

7 Again, my ruling is based upon the ground rules for a
8 sufficiency hearing under the claims procedures previously
9 adopted in these cases. As I noted during oral argument, I had
10 some suspicions that ultimately the treatment of the PBGC's
11 claim did not leave the three unions' members who were
12 beneficiaries of the Delphi HRP any worse off. But I'm not
13 basing my ruling on that suspicion. In fact, I'm assuming that
14 the claim would always have been at seven billion dollars and
15 was not reduced in light of any other value that would be going
16 to beneficiaries of the plan, from the plan. However, I still
17 do not see how the debtor, as plan administrator, under the
18 circumstances where the PBGC was going to terminate the plan
19 and the amount of the claim was fixed in contemplation of that
20 termination, had an ability, as an ERISA fiduciary, to oppose
21 the PBGC's settlement of the claim at three billion dollars.

22 So, for each of those alternative reasons I will grant
23 the debtors' objection to the splinter unions' claims to the
24 extent they're based upon an alleged breach of fiduciary duty.

25 The debtors' counsel should submit an order,

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1 consistent with my ruling, disallowing the claims.

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